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IVEY

W12114

PREDICTING A FIRM'S FINANCIAL DISTRESS: THE MERRILL LYNCH CO. STATEMENT OF CASH FLOWS[1]

Julien Lemaux, Danielle Morin and Dominique Hamel wrote this case solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.

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During the night of September 14, 2008, a few hours before Lehman Brothers folded, Merrill Lynch declared defeat: it was acquired by Bank of America (BofA). Unsure of its ability to continue as a stand-alone entity, Merrill Lynch deliberately ended 90 years of independence.[2] This nearly century-old brokerage firm sold its stock to BofA for $29 per share; the transaction totalled $50 billion. A year earlier, Merrill Lynch stock traded at slightly more than $90. "Acquiring one of the premier wealth management, capital markets and advisory companies is a great opportunity for our shareholders," [3] BofA Chairman and Chief Executive Officer Ken Lewis said on September 15, 2008 when he announced the agreement to acquire Merrill Lynch.

Before its buyout by BofA, Merrill Lynch was the world's largest and most widely recognized stockbroker. It dominated retail stockbroking with its army of 16,000 brokers around the world.[4] At the beginning of 2008, Merrill Lynch, Goldman Sachs, Morgan Stanley, Lehman Brothers and Bear Stearns were the five largest stand-alone investment banks in the world, with a combined total history of 549 years; within six months, they would all be gone.[5] The financial crisis of 2008 took its toll: Goldman Sachs and Morgan Stanley would be converted to bank holding companies while Lehman Brothers would

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[1] This case has been written on the basis of published sources only. Consequently, the interpretation and perspectives in this case are not necessarily those of Merrill Lynch Co. or any of its employees.
[2] Brian Perry, "Credit Crisis: Wall Street History," Investopedia, www.investopedia.com/university/credit-crisis/credit-crisis1.asp#axzz1uUWabcvJ, accessed May 10, 2012.
[3] Excerpt from BofA press release: "Bank of America Buys Merrill Lynch Creating Unique Financial Services Firm - Combines Leading Global Wealth Management, Capital Markets and Advisory Company with Largest Consumer and Corporate Bank in U.S.," http://mediaroom.bankofamerica.com/phoenix.zhtml?c=234503&p=irol-newsArticle&ID=1390130&highlight=, accessed May 10, 2012.
[4] Phillip Inman, "Wall Street Crisis: Bank of America Buys Merrill Lynch — Where There is Duplication, the Combination of the Two Companies Could Result in More Layoffs," guardian.co.uk, September 15, 2008, www.guardian.co.uk/business/2008/sep/15/merrilllynch.wallstreet?INTCMP=SRCH, accessed May 10, 2012.
[5] Brian Perry, "Credit Crisis: Wall Street History," Investopedia, www.investopedia.com/university/credit-crisis/credit-crisis1.asp#axzz1uUWabcvJ, accessed May 10, 2012.

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file for bankruptcy and Bear Stearns would be acquired by JP Morgan.[6] Thus, these institutions, which until 2008 had been viewed as omnipotent and indestructible, proved to be giants with feet of clay.
Some observers wondered whether any early signs of the financial distress that Merrill Lynch experienced in 2008 could be seen in the financial statements published in the years preceding its acquisition by BofA. In addition, was there value in evaluating the performance of the company from an angle other than that of operating results, the angle typically used by financial analysts? Specifically, would there be value in an assessment of the company's performance by scrutinizing the origin and use of its liquid assets for the years 2005, 2006 and 2007? Such an investigation would require focus on the statements of cash flows, including the need to:

1. evaluate the cash situation at year-end,
2. analyze cash flows provided (used) by operating activities,
3. analyze cash flows provided (used) by investment activities and
4. analyze cash flows provided (used) by financing activities.

To support such an analysis, various exhibits are included.

Exhibit 1: Brief description of the bank's activities and its principal risks.
Exhibit 2: Main events in Merrill Lynch's history (1999—2009).
Exhibit 3: Excerpts from financial statements 2005, 2006 and 2007.
Exhibit 4: Analysts' and rating agencies' opinions shortly before Merrill Lynch was acquired by Bank of America (September 2008).
Exhibit 5: Key declarations or actions by executives shortly before Merrill Lynch was acquired by Bank of America (September 2008).

WHAT THE STATEMENTS OF EARNINGS (LOSS) SAID (SEE EXHIBIT 3)

The year 2007 marked the end of the heyday for Merrill Lynch. CEO John A. Thain did not mince words when he recounted the paltry performance of this financial institution:

> Let me begin with 2007. While many of our businesses produced excellent, some even record-breaking results, we suffered the worst performance in the history of Merrill Lynch. We reported a net loss from continuing operations for the full year of $8.6 billion, or $10.73 per fully diluted share, following write-downs resulting from our exposures to the U.S. mortgage market in U.S. ABS [Asset Backed Securities] CDOs [Collateralized Debt Obligations] and sub-prime residential mortgages and securities....
>
> That must never happen again. Since my arrival, we have moved to restructure risk management and to reposition the firm for growth by meeting four priorities....[7]

Between 2005 and 2006, revenue (net interest expenses) increased by 33 per cent. In contrast, 2007 revenue was one-third of that of 2006. Between 2005 and 2006, profits advanced by 45 per cent. In 2006, Merrill Lynch realized a profit of $7.311 billion; a year later, the company sustained a net loss of $8.047 billion, justifying Thain's comment about its abysmal performance.

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[6] *Ibid.*
[7] *Excerpt from Chairman's Letter (February 22, 2008) in Merrill Lynch 2007 Annual Report.*

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In fact, looking at the income statements, the first signs of weakness were visible only in 2007. We will now examine the reaction of analysts and executives prior to the acquisition of Merrill Lynch by BofA in September 2008.

WHAT THE ANALYSTS SAID

Two days before Merrill Lynch was sold to BofA, namely September 12, 2008, Citi Investment Research analyst Prashant Bhatia reiterated a "Buy" rating and set a $45 target price on Merrill Lynch stock. Bhatia said he was remaining confident that Merrill's liquidity position was strong and that its exposure to volatile businesses was lower relative to its peers. On August 6, 2008, Standard & Poor's raised the firm's rating from two stars to three stars and maintained its target price at $25. BofA acquired the Merrill Lynch shares for $29 each, and the price would not rise beyond the threshold until the end of 2008 (see Exhibit 4).

WHAT THE EXECUTIVES SAID

In April 2008, CEO Thain exhibited renewed optimism. He congratulated himself on being able to raise billions in capital despite the operating loss incurred in 2007:

> In 2007, we lost $8.6 billion after tax, but we raised $12.8 billion in new capital. We raised significantly more capital than we lost. And we did that on purpose so that we could say to the marketplace that we raised more than enough capital. We replaced all the capital we lost. We have plenty of capital going forward, and we don't need to come back into the equity market. The goal is to maintain our current ratings. No more capital raising; I'm sure we have enough capital....[8]

In August 2008 (one month before being acquired by BofA), Thain announced Merrill Lynch's imminent return to profitability (see Exhibit 5).

[8] *Thain in an interview with Japan's Nihon Keizai Shimbun, April 4, 2008, quoted in Martin Howell, "Quotes from Merrill's Thain on Capital Needs," Reuters News, July 29, 2008, www.reuters.com/article/2008/07/29/us-merrill-thain-idUSN2824127720080729, accessed May 14, 2012.*

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Exhibit 1

BRIEF DESCRIPTION OF THE BANK'S ACTIVITIES AND ITS PRINCIPAL RISKS

Business Summary

Merrill Lynch was formed in 1914 and became a publicly traded company on June 23, 1971. In 1973, we created the holding company, ML & Co., a Delaware corporation that, through its subsidiaries, is one of the world's leading capital markets, advisory and wealth management companies with offices in 40 countries and territories and total client assets of almost $2 trillion at December 28, 2007. As an investment bank, we are a leading global trader and underwriter of securities and derivatives across a broad range of asset classes, and we serve as a strategic advisor to corporations, governments, institutions and individuals worldwide. In addition, we own a 45 per cent voting interest and approximately half of the economic interest of BlackRock, Inc. ("BlackRock"), one of the world's largest publicly traded investment management companies with approximately $1.4 trillion in assets under management at December 28, 2007.

Since the fourth quarter of 2006, our business segment reporting reflects the management reporting lines established after the merger of our Merrill Lynch Investment Managers ("MLIM") business with BlackRock on September 29, 2006 (the "BlackRock merger").

Prior to the fourth quarter of 2006, we reported our business activities in three business segments: Global Markets and Investment Banking ("GMI"), Global Private Client ("GPC") and MLIM. Effective with the BlackRock merger, MLIM ceased to exist as a separate business segment. As a result, a new business segment, Global Wealth Management ("GWM"), was created, consisting of GPC and Global Investment Management ("GIM"). GWM and GMI are now our business segments....(

We also provide a variety of research services on a global basis through Global Research. These services are at the core of the value proposition we offer to institutional and individual investor clients and are an integral component of the product offerings to GMI and GWM. This group distributes research focusing on four main disciplines globally: fundamental equity research, fixed income and equity-linked research, economics and foreign exchange research and investment strategy research. We consistently rank among the leading research providers in the industry, and our analysts and other professionals cover approximately 3,600 companies.

We are a Consolidated Supervised Entity ("CSE") and subject to group-wide supervision by the SEC. As a CSE, we compute allowable capital and allowances and permit the SEC to examine the books and records of the holding company and of any subsidiary that does not have a principal regulator. We have also adopted SEC reporting, record-keeping, and notification requirements. We were in compliance with applicable CSE standards as of December 28, 2007. In respect of the European Union ("EU") Financial Conglomerates (or "Financial Groups") Directive, the U.K. Financial Services Authority ("FSA") has determined that the SEC undertakes equivalent consolidated supervision for Merrill Lynch.

Business Risks

- **Market Risk:** Our business may be adversely impacted by global market and economic conditions that may cause fluctuations in interest rates, exchange rates, equity and commodity prices and credit spreads.... We may incur additional material losses in future periods due to write-downs in the value of financial instruments.... Our business has been and may be adversely impacted by significant holdings of financial assets or significant loans or commitments to extend loans.... (p.24—25)
- **Credit Risk:** Our business may be adversely impacted by an increase in our credit exposure related to trading, lending, and other business activities.... (p.25)

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Exhibit 1 (continued)

- **Risks Related to our Commodities Business:** We are exposed to environmental, reputational and regulatory risk as a result of our commodities related activities.... (p.25)
- **International Risk:** We have an increasing international presence and as a result, we are increasingly subject to a number of risks in various jurisdictions.... (p.25)
- **Liquidity Risk:** Our business and financial condition may be adversely impacted by an inability to borrow funds or sell assets to meet our obligations.... (p.25—26)
- **Operational Risk:** We may incur losses due to the failure of people, internal processes and systems or from external events. Such operational risks may include exposure to theft and fraud, improper business practices, client suitability and servicing risks, unauthorized transactions, product complexity and pricing risk or from improper recording, evaluating or accounting for transactions. (…) We may incur losses as a result of an inability to effectively evaluate or mitigate the risks in our businesses.... (p.26)
- **Litigation Risk:** Legal proceedings could adversely affect our operating results for a particular period and impact our credit ratings.... (p.26)
- **Regulatory and Legislative Risks:** Many of our businesses are highly regulated and could be impacted, and in some instances adversely impacted, by regulatory and legislative initiatives around the world.... (p.26)

Source: Merril Lynch & Co., Inc. 2007 Form 10-K for the financial year ended December 28, 2007, U.S. Securities and Exchange Commission, UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549, pp. 24-26.

Exhibit 2

MAIN EVENTS IN MERRILL LYNCH'S HISTORY (1999—2009)

1999: Merrill is world's largest underwriter of stocks and bonds for the last time, a title it cedes the next year to Citigroup Inc.

2001: Most of Merrill's 9,000 Wall Street employees evacuate their offices opposite the World Trade Center during the 9/11 attacks. Three die.

December 2002: Merrill reaches $100 million settlement with New York Attorney General Eliot Spitzer over alleged conflicts of interest by research analysts. The same month, it names Stanley O'Neal chief executive. He becomes chairman in April 2003.

2006: Merrill adds billions of dollars of mortgages to its balance sheet. It acquires First Franklin Financial Corp, a subprime mortgage lender owned by National City Corp.

October 2007: Merrill ousts Stanley O'Neal as chairman and chief executive as mortgage losses begin to mount, and after O'Neal approaches Wachovia Corp about a merger without telling the board. John Thain, chief executive of NYSE Euronext, is named his replacement as of December 1.

2008: Losses top $19.2 billion in the year ended June 30, as credit losses $40 billion. Merrill scrambles to raise capital from sovereign wealth funds and other investors, and sell risky assets.

September 15, 2008: Merrill agrees to be acquired by Bank of America for $29 per share.

November 26, 2008: The Federal Reserve approves the acquisition of Merrill Lynch by BofA.

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Exhibit 2 (continued)

December 5, 2008: On the same day, Merrill Lynch and BofA shareholders approve the acquisition, to be completed by the end of the year.

January 13, 2009: The Treasury Department announces that it will invest another $10 billion of TARP money in BofA. This amount was originally set aside for Merrill Lynch.

Sources: Jonathan Stempel, "Timeline: History of Merrill Lynch," Reuters News, September 15, 2008, www.reuters.com/article/idUSN1546989520080915 , accessed May 10, 2012; Leva M. Augstums and Stephen Bernard, "Merrill, BofA shareholders Approve Combination," Associated Press Newswires, December 5, 2008; CNN Money, "Treasury: $10B more to B of A," CNN Money, January 13, 2009, http://money.cnn.com/2009/01/13/news/economy/treasury_capital_investments/index.htm, accessed November 12, 2010; Patrick Rucker, "Fed Approves Bank of America Buying Merrill Lynch," Reuters News, November 26, 2008, http://www.reuters.com/article/2008/11/26/businesspro-us-fed-approves-bank-of-amer-idUKTRE4AP80K20081126., accessed May 14, 2012.

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Exhibit 3

EXCERPTS FROM FINANCIAL STATEMENTS 2005, 2006 AND 2007

Consolidated Statements of (Loss)/Earnings

(IN MILLIONS, EXCEPT PER SHARE AMOUNTS)	YEAR ENDED LAST FRIDAY IN DECEMBER 2007 (52 WEEKS)	2006 (52 WEEKS)	2005 (52 WEEKS)
Revenues			
Principal transactions	**$ (12,067)**	$ 7,248	$ 3,647
Commissions	**7,284**	5,985	5,277
Investment banking	**5,582**	4,648	3,777
Managed accounts and other fee-based revenues	**5,465**	6,273	5,701
Earnings from equity method investments	**1,627**	556	567
Other	**(2,190)**	2,883	1,848
	5,701	27,593	20,817
Interest and dividend revenues	**56,974**	39,790	26,031
Less interest expense	**51,425**	35,571	21,571
Net interest profit	**5,549**	4,219	4,460
Gain on merger	**–**	1,969	–
Revenues, Net of Interest Expense	**11,250**	33,781	25,277
Non-Interest Expenses			
Compensation and benefits	**15,903**	16,867	12,314
Communications and technology	**2,057**	1,838	1,599
Brokerage, clearing, and exchange fees	**1,415**	1,096	855
Occupancy and related depreciation	**1,139**	991	931
Professional fees	**1,027**	885	729
Advertising and market development	**785**	686	593
Office supplies and postage	**233**	225	209
Other	**1,522**	1,383	1,286
Total Non-Interest Expenses	**24,081**	23,971	18,516
Pre-Tax (Loss)/Earnings from Continuing Operations	**(12,831)**	9,810	6,761
Income tax (benefit)/expense	**(4,194)**	2,713	1,946
Net (Loss)/Earnings from Continuing Operations	**$ (8,637)**	$ 7,097	$ 4,815
Discontinued Operations:			
Pre-tax earnings from discontinued operations	**1,397**	616	470
Income tax expense	**537**	214	169
Net Earnings from Discontinued Operations	**860**	402	301
Net (Loss)/Earnings	**$ (7,777)**	$ 7,499	$ 5,116
Preferred stock dividends	**270**	188	70
Net (Loss)/Earnings Applicable to Common Stockholders	**$ (8,047)**	$ 7,311	$ 5,046
Basic (loss)/earnings per common share from continuing operations	**$ (10.73)**	$ 7.96	$ 5.32
Basic earnings per common share from discontinued operations	**1.04**	0.46	0.34
Basic (Loss)/Earnings Per Common Share	**$ (9.69)**	$ 8.42	$ 5.66
Diluted (loss)/earnings per common share from continuing operations	**$ (10.73)**	$ 7.17	$ 4.85
Diluted earnings per common share from discontinued operations	**1.04**	0.42	0.31
Diluted (Loss)/Earnings Per Common Share	**$ (9.69)**	$ 7.59	$ 5.16
Dividend Paid Per Common Share	**$ 1.40**	$ 1.00	$ 0.76
Average Shares Used in Computing Earnings Per Common Share			
Basic	**830.4**	868.1	890.7
Diluted	**830.4**	963.0	977.7

See Notes to Consolidated Financial Statements.

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Exhibit 3 (continued)

Consolidated Balance Sheets

(DOLLARS IN MILLIONS, EXCEPT PER SHARE AMOUNTS)	DEC. 28, 2007	DEC. 29, 2006
Assets		
Cash and cash equivalents	$ 41,346	$ 32,109
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	22,999	13,449
Securities financing transactions		
Receivables under resale agreements (includes $100,214 measured at fair value in 2007 in accordance with SFAS No. 159)	221,617	178,368
Receivables under securities borrowed transactions	133,140	118,610
	354,757	296,978
Trading assets, at fair value (includes securities pledged as collateral that can be sold or repledged of $78,787 in 2007 and $58,966 in 2006)		
Derivative contracts	72,689	36,262
Equities and convertible debentures	60,681	48,527
Corporate debt and preferred stock	37,849	32,854
Mortgages, mortgage-backed, and asset-backed	28,013	44,401
Non-U.S. governments and agencies	15,082	21,075
U.S. Government and agencies	11,219	13,086
Municipals, money markets and physical commodities	9,136	7,643
	234,669	203,848
Investment securities (includes $4,685 measured at fair value in 2007 in accordance with SFAS No. 159) (includes securities pledged as collateral that can be sold or repledged of $16,124 in 2007 and $4 in 2006)	82,532	83,410
Securities received as collateral, at fair value	45,245	24,929
Other receivables		
Customers (net of allowance for doubtful accounts of $24 in 2007 and $41 in 2006)	70,719	49,427
Brokers and dealers	22,643	18,900
Interest and other	33,487	21,054
	126,849	89,381
Loans, notes, and mortgages (net of allowances for loan losses of $533 in 2007 and $478 in 2006) (includes $1,149 measured at fair value in 2007 in accordance with SFAS No. 159)	94,992	73,029
Separate accounts assets	-	12,314
Equipment and facilities (net of accumulated depreciation and amortization of $5,518 in 2007 and $5,213 in 2006)	3,127	2,924
Goodwill and intangible assets	5,091	2,457
Other assets	8,443	6,471
Total Assets	$ 1,020,050	$ 841,299

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Exhibit 3 (continued)

Consolidated Balance Sheets

(DOLLARS IN MILLIONS, EXCEPT PER SHARE AMOUNT)	DEC. 28, 2007	DEC. 29, 2006
Liabilities		
Securities financing transactions		
Payables under repurchase agreements (includes $89,733 measured at fair value in 2007 in accordance with SFAS No. 159)	$ 235,725	$ 222,624
Payables under securities loaned transactions	55,906	43,492
	291,631	266,116
Short-term borrowings	24,914	18,110
Deposits	103,987	84,124
Trading liabilities, at fair value		
Derivative contracts	73,294	42,040
Equities and convertible debentures	29,652	23,268
Non-U.S. governments and agencies	9,407	13,385
U.S. Government and agencies	6,135	12,510
Corporate debt and preferred stock	4,549	6,323
Municipals, money markets and other	551	1,336
	123,588	98,862
Obligation to return securities received as collateral, at fair value	45,245	24,929
Other payables		
Customers	63,582	49,414
Brokers and dealers	24,499	24,282
Interest and other	44,545	38,897
	132,626	112,593
Separate accounts liabilities	-	12,314
Long-term borrowings (includes $76,334 measured at fair value in 2007 in accordance with SFAS No. 159)	260,973	181,400
Junior subordinated notes (related to trust preferred securities)	5,154	3,813
Total Liabilities	988,118	802,261
Commitments and Contingencies		
Stockholders' Equity		
Preferred Stockholders' Equity (liquidation preference of $30,000 per share; issued: 2007 — 155,000 shares; 2006 — 105,000 shares; liquidation preference of $1,000 per share; issued: — 2007 — 115,000 shares)	4,383	3,145
Common Stockholders' Equity		
Shares exchangeable into common stock	39	39
Common stock (par value $1.33⅓ per share; authorized: 3,000,000,000 shares; issued: 2007 — 1,354,309,819 shares; 2006 — 1,215,381,006 shares)	1,805	1,620
Paid-in capital	27,163	18,919
Accumulated other comprehensive loss (net of tax)	(1,791)	(784)
Retained earnings	23,737	33,217
	50,953	53,011
Less: Treasury stock, at cost (2007 — 418,270,289 shares; 2006 — 350,697,271 shares)	23,404	17,118
Total Common Stockholders' Equity	27,549	35,893
Total Stockholders' Equity	31,932	39,038
Total Liabilities and Stockholders' Equity	$ 1,020,050	$ 841,299

See Notes to Consolidated Financial Statements.

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Exhibit 3 (continued)

Consolidated Statements of Cash Flows

(DOLLARS IN MILLIONS)	2007	YEAR ENDED LAST FRIDAY IN DECEMBER 2006 AS RESTATED SEE NOTE 20	2005 AS RESTATED SEE NOTE 20
Cash flows from operating activities:			
Net (loss)/earnings	$ (7,777)	$ 7,499	$ 5,116
Adjustments to reconcile net (loss)/earnings to cash used for operating activities:			
Gain on merger	-	(1,969)	-
Gain on sale of MLIG	(316)	-	-
Depreciation and amortization	901	523	473
Share-based compensation expense	1,795	3,156	1,003
Deferred taxes	(4,924)	(360)	232
Earnings from equity method investments	(1,409)	(421)	(417)
Other	160	1,045	1,017
Changes in operating assets and liabilities:			
Trading assets	(29,650)	(55,392)	25,902
Cash and securities segregated for regulatory purposes or deposited with clearing organizations	(8,886)	(1,019)	3,259
Receivables under resale agreements	(43,247)	(15,346)	(84,166)
Receivables under securities borrowed transactions	(14,530)	(26,126)	2,014
Customer receivables	(21,280)	(9,562)	(2,217)
Brokers and dealers receivables	(3,744)	(6,825)	(19)
Proceeds from loans, notes, and mortgages held for sale	72,054	41,317	31,255
Other changes in loans, notes, and mortgages held for sale	(86,894)	(47,670)	(34,554)
Trading liabilities	23,878	9,554	(12,402)
Payables under repurchase agreements	13,101	29,557	44,386
Payables under securities loaned transactions	12,414	24,157	(2,901)
Customer payables	14,135	13,795	1,238
Brokers and dealers payables	113	4,791	(605)
Trading investment securities	9,333	(867)	2,048
Other, net	2,411	6,400	(4,937)
Cash used for operating activities	(72,362)	(23,763)	(24,275)
Cash flows from investing activities:			
Proceeds from (payments for):			
Maturities of available-for-sale securities	13,362	13,222	25,452
Sales of available-for-sale securities	39,327	16,176	36,574
Purchases of available-for-sale securities	(58,325)	(31,357)	(51,283)
Maturities of held-to-maturity securities	2	18	16
Purchases of held-to-maturity securities	(3)	(15)	-
Loans, notes, and mortgages held for investment, net	5,113	(681)	(9,678)
Proceeds from the sale of discontinued operations	1,250	-	-
Acquisitions, net of cash	(2,045)	-	-
Other investments	(5,048)	(6,546)	(1,442)
Transfer of cash balances related to merger	-	(651)	-
Equipment and facilities, net	(719)	(1,174)	(278)
Cash used for investing activities	(7,086)	(11,008)	(639)
Cash flows from financing activities:			
Proceeds from (payments for):			
Commercial paper and short-term borrowings	6,316	9,123	(154)
Issuance and resale of long-term borrowings	165,107	87,814	49,703
Settlement and repurchases of long-term borrowings	(93,258)	(42,545)	(31,195)
Deposits	9,884	4,108	270
Derivative financing transactions	848	608	1,742
Issuance of common stock	4,787	1,838	858
Issuance of preferred stock, net	1,123	472	2,043
Common stock repurchases	(5,272)	(9,088)	(3,700)
Other common stock transactions	(60)	539	(80)
Excess tax benefits related to share-based compensation	715	531	-
Dividends	(1,505)	(1,106)	(777)
Cash provided by financing activities	88,685	52,294	18,710
Increase (decrease) in cash and cash equivalents	9,237	17,523	(6,204)
Cash and cash equivalents, beginning of period	32,109	14,586	20,790
Cash and cash equivalents, end of period	$ 41,346	$ 32,109	$ 14,586
Supplemental disclosure of cash flow information:			
Cash paid for:			
Income taxes	$ 1,846	$ 2,638	$ 1,443
Interest	$ 49,881	$ 35,685	$ 21,519

Source: Merrill Lynch 2007 Annual Report, p.81—86, www.ml.com/annualmeetingmaterials/2007/ar/download.asp, accessed May 14, 2012.

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Exhibit 4

ANALYSTS' AND RATING AGENCIES' OPINIONS SHORTLY BEFORE MERRIL LYNCH WAS ACQUIRED BY BANK OF AMERICA (SEPTEMBER 2008)

Merrill Lynch & Co. Inc. can double its earnings power over the next couple of years to earn in the $10 billion to $12 billion range, by executing revenue growth initiatives across major businesses, Citigroup analyst Prashant Bhatia said....

Merrill was one of the hardest-hit investment banks in a recent credit implosion that triggered more than $100 billion of write-downs at financial firms. Merrill itself suffered about $12 billion of net losses in the second half of 2007.

"Merrill has aggressively written down CDO/subprime assets and at this point the worst seems to be behind it," Bhatia said.

Source: Tenzin Pema, "Citi Expects Merrill's Earnings Power to Double," Reuters News, February 11, 2008.

A near $2 billion first quarter loss at Merrill Lynch prompted ratings agency Moody's Investors Service to say on Thursday it may cut its long-term A1 rating on the investment bank.... Standard & Poor's and Fitch Ratings both affirmed their A+ credit ratings but each has a negative outlook on the bank, meaning a downgrade is more likely. (…)

Source: Natalie Harrison, "Moody's May Cut Merrill Rating; S&P, Fitch Affirm," Reuters News, April 17, 2008.

Citi analyst Prashant Bhatia said that aside from the write-downs, "underlying core trends looked great." He said write-downs are at or near a low point. Bhatia kept a "Buy" rating on the stock and said the company should become profitable again in the second quarter.

Source: Associated Press Newswires, "Out of the Gate: Merrill Lynch Rises; Some Say Worst is Over," AP Newswires, April 18, 2008.

Moody's Investors Service on Thursday cut its debt ratings on Merrill Lynch & Co, citing four consecutive quarters of sizable losses from bad mortgage debt.... Moody's cut Merrill's rating one notch to "A2," the sixth highest investment grade, and awarded a stable outlook, indicating an additional rating change is not anticipated over the next 12 to 18 months. The rating is now in line with Standard & Poor's "A" rating on Merrill, however S&P has a negative outlook on the bank, indicating it may be more likely to be cut over the next two years....

Source: Karen Brettell, "Moody's Cut Merrill on Fourth Straight Loss," Reuters News, July 17, 2008.

Merrill Lynch announced the sale of $11.1 billion of collateralized debt obligations (CDOs). The sale reduces the firm's gross exposure to CDOs to $8.8 billion and its net exposure to $1.6 billion. Merrill is also in the process of reducing counterparty exposure to monoline insurers, improving the overall quality of its hedges. It also said it will raise at least $8.5 billion through a common stock offering, but provisions on previous capital raisings make the plan even more dilutive to current shareholders. Still, we think these actions are positive for the long-term health of Merrill. We kept our target price at $25, as some risks still remain.

Source: Standard & Poor's, The Outlook: Intelligence for the Individual Investor 80.3, august 6, 2008, p. 3.

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Exhibit 4 (continued)

Merrill Lynch & Co. shares pointed lower early Friday after Goldman Sachs cut its rating on the stock to "Sell" on expectations for more write-downs tied to troubled investments.... In a note to clients late Thursday, analyst William Tanona added Merrill to his "Conviction Sell" list, noting the investment bank's still significant exposure to troubled assets, namely collateralized debt obligations, mortgages and leveraged loans.

Source: Associated Press Newswires, "Goldman Sachs Cuts Merrill Lynch to "Sell"; Expects Weak 3rd-Quarter Results, More Write-downs," AP Newswires, September 5, 2008.

Citi Investment Research analyst Prashant Bhatia, however, remains confident that Merrill's liquidity position is strong and that its exposure to volatile businesses is lower relative to its peers. Bhatia reiterated a "Buy" rating and $45 target price on the stock.

Source: Associated Press Newswires "Merrill Lynch Shares Tumble as Concerns over Lehman Brothers Spreads to Other Financial Stocks," AP Newswires, September 12, 2008.

Exhibit 5

KEY DECLARATIONS OR ACTIONS BY EXECUTIVES SHORTLY BEFORE MERRIL LYNCH WAS ACQUIRED BY BANK OF AMERICA (SEPTEMBER 2008)

"While the firm's earnings performance for the year is clearly unacceptable, over the last few weeks we have substantially strengthened the firm's liquidity and balance sheet," said Chief Executive John Thain.

Source: Andrew Edwards, "Merrill Swings To 4Q Loss On $14.6B In Write-Downs," Dow Jones News Service, January 17, 2008.

Merrill Lynch & Co. on Wednesday said it will eliminate 650 jobs as it stops making subprime mortgages through its First Franklin Financial Corp unit. New York-based Merrill said it is quitting the subprime lending business because of the deteriorating market for home loans, which go to people with poor credit.... Merrill expects to incur $60 million of charges related to First Franklin, mainly for severance payments and closing offices, with about half the amount in the first quarter.

Source: Jonathan Stempel, "Merrill Quits Subprime Lending, Cuts 650 Jobs," Reuters News, March 5, 2008.

In an interview with France's Le Figaro newspaper published on Saturday, Merrill CEO John Thain said the credit crisis was far from over but the bank would not need to seek more outside capital to bolster its balance sheet. "We lost $8.6 billion last year ... But in parallel we raised $12.8 billion in under two months, or more than the losses we suffered. That is why today I can say that we will not need additional funds. These problems are behind us. We will not return to the market," Thain was quoted as saying.

Source: Nick Antonovics, "Merrill CEO Says Won't Need More Capital — Report," Reuters News, March 8, 2008.

Merrill Lynch & Co. on Friday said Chief Executive John Thain received a bonus of $15 million for 2007, along with a $57,692 salary and options awards valued at $1.3 million. According to a filing on Friday with the Securities and Exchange Commission, Nelson Chai, the securities firm's chief financial officer,

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Exhibit 5 (continued)

received a $1.25 million bonus for 2007, a salary of $34,615 and options awards valued at $219,000. No other executives received bonuses for 2008. Mr. Thain received his $15 million cash sign-on bonus in December. Mr. Chai received his bonus in January.

Source: Jared A. Favole, "Merrill's Thain Received $15 Million Bonus for '07," The Wall Street Journal, March 15, 2008

Merrill Lynch & Co., the world's largest brokerage, on Thursday said it would cut another 3,000 jobs after more than $6.5 billion of fresh write-downs pushed it to a loss for the first quarter.

Source: Koe Bel Bruno, "Merrill Lynch Posts Steep First-quarter Loss on Write-downs," AP Newswires, April 17, 2008.

Merrill Lynch & Co Inc plans to pay its new global head of sales and trading, hired last month from rival Goldman Sachs Group Inc, a 2008 bonus of $39.4 million.

Source: Christian Plumb, "Merrill to Pay Montag $39.4 Million Bonus for 2008," Reuters News, May 2, 2008.

"We're very, very comfortable with the balance sheet that we have and, more importantly, the credit quality that's on the balance sheet," Nelson Chai, Merrill's chief financial officer said at the conference. He said the company has $44 billion in equity capital....

Chai said he expects Merrill will be able to post a return on equity, which measures how efficient a company is in generating profit from its assets, in excess of 20 per cent.

Source: Svea Herbst-Bayliss, "Merrill Executives Say Firm Regains Strength," Reuters News, May 12, 2008.

The world's biggest brokerage announced a wider-than-expected $4.89 billion second-quarter loss and said it was selling assets — its stake in media company Bloomberg LP for $4.4 billion and its Financial Data Services Inc. subsidiary for $3.5 billion. (…)

"This was a difficult and disappointing quarter in terms of the bottom line," Chief Executive John Thain told analysts on a conference call. "But, in spite of this loss, we likely have in our last two quarters more than replaced the capital that we lost." (…)

Source: Koe Bel Bruno, "Merrill Lynch Posts 2Q Loss; Sells Bloomberg Stake," AP Newswires, July 17, 2008.

Merrill Lynch & Co Inc said on Monday it would raise $8.5 billion by selling new stock. But CEO John Thain has consistently denied that the investment bank would need to raise more capital. Here is a selection of comments by Thain or about his views since the end of last year:

> "One of my first priorities at Merrill Lynch was to strengthen the firm's balance sheet, and today we have made great progress towards that by bolstering our capital position through these investments and our announced sale of Merrill Lynch Capital." (Dec. 24, 2007 — Thain in a statement when Merrill announced a $6.2 billion capital raising)
>
> "...These transactions make certain that Merrill is well-capitalized." (Jan. 15, 2008 — Thain in a statement after selling $6.6 billion of preferred shares to a group that included Japanese and Kuwaiti investors)
>
> "We're very confident that we have the capital base now that we need to go forward in 2008." (Jan. 18, 2008 — Thain as quoted by the New York Times)

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Exhibit 5 (continued)

> "...Today I can say that we will not need additional funds. These problems are behind us. We will not return to the market." (March 8, 2008 — Thain in an interview with France's *Le Figaro* newspaper)
>
> "We have more capital than we need, so we can say to the market that we don't need more injections. We can confirm that we have tackled the problem." (March 16, 2008 — Thain in an interview with Spain's *El Pais* newspaper)
>
> "We deliberately raised more capital than we lost last year ... we believe that will allow us to not have to go back to the equity market in the foreseeable future." (April 8, 2008 — Thain to reporters in Tokyo, as reported by Reuters)
>
> "John Thain has been very clear that we have sufficient capital and don't have a need to raise additional common equity for the foreseeable future. When we raised this capital in January, we had a lot of demand so we went beyond what we needed." (May 12, 2008 — Merrill President Greg Fleming in an interview with the *Times* of London)
>
> "Today on a pro forma basis we have about $44 billion of equity capital, which actually isn't very much below the all-time high that Merrill ever had. And our philosophy about this is that we are well-capitalized. We're comfortable with our capital position. We, like everyone else, are deleveraging our balance sheet." (June 11, 2008 — Thain on a conference call hosted by Deutsche Bank)
>
> "Right now we believe that we are in a very comfortable spot in terms of our capital." (July 17, 2008 — Thain on a conference call after posting Merrill's second-quarter results)

Source: Martin Howell, "Quotes from Merrill's Thain on Capital Needs" Reuters News, July 29, 2008.

Merrill Lynch & Co. Chief Executive John Thain said Monday that the nation's largest brokerage expects to be "shortly back to profitability" after ridding itself of risky assets....

However, considering the market's volatility, he would not call a bottom of the credit crisis or make speculations about exactly when Merrill will begin to stop losing money. "I inherited a balance sheet that was overloaded with illiquid mortgage assets," he told CNBC. "The world has gotten a lot more difficult, and we're simply dealing with that by managing our balance sheet down and raising capital if needed."

Source: Associated Press Newswires, "Merrill CEO Sees Return to Profits Shortly," AP Newswires, August 4, 2008.

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